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applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to part 2 of this chapter.

§ 273.28 Deadline for Central Office action.

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional Information requested in § 273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.29 Negotiating the contract.

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in § 273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

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Subpart C—Funding Provisions

§ 273.31 Distribution formula.

(a) Funds shall be distributed to eligible contractors based upon the number of eligible Indian students to be served times twenty-five (25%) percent of the higher of the State or national average per pupil operating cost. Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose shall be allotted pro rata in accordance with the distribution method outlined in this formula.

(b) The Assistant Secretary may make exceptions to the provisions of paragraph (a) of this section based on the special cultural, linguistic, social or educational needs of the communities involved including the actual cost of education in the community only after consultation with all tribes who may be affected by such exceptions.

(25 U.S.C. 452–456; sec. 202, Pub. L. 93–638, 88 Stat. 2203, and Pub. L. 95–561, sec. 1102 (a) and (b))

[45 FR 9241, Feb. 11, 1980]

§ 273.32 Pro rata requirement.

All monies provided by a contract pursuant to this part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimus. Such de minimus participation must be approved by the Indian Education Committee.

§ 273.33 Use of funds for operational support.

All funds for school operational support shall be used to meet established State educational standards or State-wide requirements.

§ 273.34 Use of other Federal, State and local funds.

(a) Contract funds under this part shall supplement, and not supplant, Federal, State and local funds. Each

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contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) shall constitute the only federally-funded school lunch program for Indian students in public schools. Where Indian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.18 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible students under § 273.12.

[47 FR 57275, Dec. 23, 1982]

§ 273.35 Capital outlay or debt retirement.

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.36 Eligible subcontractors.

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any appropriate individual, organization or corporation.

§ 273.37 Use of funds outside of schools.

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.38 Equal quality and standard of education.

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

Subpart D—General Contract Requirements

§ 273.41 Special program provisions to be included in contract.

All contracts under this part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal Funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).